IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7879 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

A.K. PATEL

Versus

STATE OF GUJARAT

Appearance:

MR SHIRISH JOSHI for Petitioners

Mr.RC KODEKAR, A.G.P. for Respondent No 1 & 2

MRS HIRABEN R JOSHI for Respondent No. 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 15/02/2001

ORAL JUDGEMENT

1. Number of prayers have been sought by the petitioner in this writ petition. The petitioner is the President and Manager of Vinay Mandir High School,

Petlad, District Kheda. The first relief sought by the petitioner is for declaration that the action of the District Education Officer in not granting No Objection Certificate to the petitioner school is illegal, discreminatory and unconstitutional. The second relief sought is for a declaration that the petitioner is entitled to appoint teacher on the post on the basis of requisite educational qualification and they are entitled to appoint person who holds such qualification. The third relief sought is for setting aside the action of the District Education Officer not granting No Objection Certificate to the petitioner school being unjust, improper and unconstitutional. The 4th prayer is for setting aside the order of the Tribunal dated 4.8.1989 on an Application No.401/89. The other reliefs are in the nature of interim relief.

2. Shri Shirish Joshi for the petitioner and Shri R.C.Kodekar, learned A.G.P. for the respondents No.1 & 2 have been heard. List has been revised twice but none appeared for respondent No.3.

3. So far as reliefs B & D are concerned they cannot be granted for the obvious reason that the order of the District Education Officer not granting N.O.C. to the petitioner school has not been filed nor its copy has been brought on record. Consequently in the absence of copy of this order it cannot be adjudicated that the order is necessarily illegal.

4. Learned Counsel for the petitioner has argued that he is challenging mainly the order of the Tribunal, Annexure : B, passed on 4.8.1989. Shri Kodekar, learned A.G.P. has tried to support the order of the Tribunal. However, after perusing the order of the Tribunal I find that it does not require quashing and setting aside. On the other hand there seems to have occurred some mistake in the order of the tribunal. The reasons are that the stand of the School was that as and when there is a room for teacher in the secondary unit of the petitioner school then it has no objection in taking back the applicant by recall. The stand of the school before the Tribunal was that if any vacancy arises in the secondary unit by up-grading, by resignation, by retirement, by termination or by death, then it will recall the applicant and absorb him in the parent institution. It was also the stand of the school that subject to Science and Mathematics teachers in the secondary section the requirement of subject could not come in the way of recall of the applicant because in the secondary school today there is no further teacher of the subject of

physical education either in secondary or in higher secondary unit. Shri Joshi has argued that on the relevant date there were six classes in the school as against that there was nine teachers. As such there was no vacancy on which the respondent No.3 could be recalled. Considering these facts the Tribunal in its order observed as under :

"Under these circumstances, ends of justice would be met if an order is passed restraining the opponent school permanently from filling in the post in the secondary unit in the subject of the applicant till the time the applicant is absorbed by recall in the secondary unit in the subject of the applicant (emphasis supplied) till the time the applicant is absorbed by recall in the secondary unit. However, it will be open to the opponent school management to make any appointments in the higher secondary unit as per the subject requirement and as it may deem fit and necessary."

After making this observation the Tribunal passed final order as under :

"Subject to teachers Science and Maths in the Secondary school, the opponent school is directed to re-absorb the applicant by recall if as and when a vacancy arises in the secondary unit of the opponent school management in any manner. The department is directed not to give NOC to the opponent school in the secondary unit till the time the applicant is reabsorbed by recall in the secondary unit of the opponent school management. The order of the DEO dated 4.7.89 directing the applicant to be absorbed in the opponent school's secondary unit is quashed and set aside."

5. Conjoint reading of these two paras of the order of Tribunal would make it clear that in the first para quoted above it was clear intention of the Tribunal that the school was permanently restrained from filling in the post in the secondary unit in the subject of the applicant till the time the applicant is absorbed by recall in the secondary unit. The applicant possesses qualification as physical instructor. He was not a teacher in English. The difficulty before the School arose when vacancy arose for appointing English Teacher. The school sought NOC from the District Education Officer, but the District Education Officer refused to grant NOC on the pretext that the order of the Tribunal stands in his way. This interpretation of the District

Education Officer is patently incorrect because the observation of the Tribunal quoted above needs only one interpretation that the restraint order was passed against the school only from filling in the post in secondary unit in the subject of the applicant, namely, on the post of Physical Instructor till the applicant is absorbed by recall in the secondary unit and not that all other appointments in all the subjects were restrained by the Tribunal. The intention of the tribunal is further clear when it has observed that subject to Science and Maths teacher the observations were made by the tribunal. Of course there is no mention of English teacher but the observation of the Tribunal makes it clear that it was confined only to teacher in physical instructor and not in other subject.

6. The second para quoted above also clarifies the same position. There is some ambiguity in the second para of the tribunal's order wherein it has omitted to mention not to give NOC to the opponent school in the secondary unit in the subject of physical instructor till the applicant is absorbed by recalling. It is because of this omission that doubt was created in the mind of the District Education Officer that he cannot grant NOC for the appointment of english teacher also.

7. As such in view of the above discussion the writ petition is disposed of with observation that the observation of the Tribunal in the operative portion of its order will be read with reference to the physical instructor possessing qualification of such post and not to other teachers like Science, English, Maths and other subjects which are tought in the school. With this clarification the petition is disposed of. The petitioner can now approach the District Education Officer who will consider the request of the petitioner in the light of the Tribunal's observation which has been clarified by this Court in this Judgment. No order as to costs.

sd/-

Date : February 16, 2001 (D. C. Srivastava, J.)

sas